

OFFICE OF SPECIAL MASTERS

Filed: May 5, 2021

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DECISION¹

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

To receive compensation under the Program, petitioner must prove either 1) that he suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to his vaccination, or 2) that he suffered an injury that was actually caused by a vaccine. *See* §§ 13(a)(1)(A) and 11(c)(1). An examination of the record did not uncover evidence that petitioner suffered a “Table Injury.”

In this instance, petitioner requested a fact ruling on the record to clarify issues of onset. ECF Nos. 34-35. A Finding of Facts and Ruling on Onset was issued on February 22, 2021, finding that petitioner’s onset of shoulder pain was not within 48 hours of his October 22, 2015 flu vaccination. ECF No. 41. Because the onset finding did not support a Table Injury, petitioner was required to file a medical expert opinion to support his claim. *See* § 13(a)(1).

Petitioner did not file a medical expert opinion to support his claim. On May 3, 2021, petitioner filed a Motion for Dismissal Decision, stating that an investigation has demonstrated that petitioner will likely be unable to succeed on his claim in the Vaccine Program. ECF No. 44.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that he suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

s/ Mindy Michaels Roth
Mindy Michaels Roth
Special Master